

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CIVIL MINUTES – GENERAL

Case No. LA CV15-08830 JAK (KSx)

Date June 25, 2019

Title Voice International, Inc., et al. v. Oppenheimer Cine Rentals, LLC, et al.

Present: The Honorable JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

Andrea Keifer

Not Reported

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Not Present

Attorneys Present for Defendants:

Not Present

**Proceedings:** **(IN CHAMBERS) ORDER ADVANCING HEARING ON MOTION TO STRIKE OR DISMISS DEFENDANT KLEIN SR.'S AFFIRMATIVE DEFENSES (DKT. 323)**

On June 3, 2019, Klein Sr. filed his Answer to the Fourth Amended Complaint.<sup>1</sup> Dkt. 318. In his Answer, Klein Sr. alleges seven affirmative defenses that are substantially the same as affirmative defenses included in OPEL's Answer to the Second Amended Complaint. See Dkt. 223.<sup>2</sup> Klein Sr. also includes affirmative defenses of "Lack of Personal Jurisdiction and Venue" and "Res Judicata." Dkt. 318 (see Seventh and Eighth Affirmative Defenses).

Plaintiffs have moved to strike four of Klein Sr.'s affirmative defenses, including Res Judicata and three affirmative defenses that are substantially similar to ones included in OPEL's answer (for "Non-Infringement," "Inequitable Conduct,"<sup>3</sup> and "Reservation of Remaining Defenses"<sup>4</sup>). "The Motion," Dkt. 323. The Motion has been set for hearing on October 7, 2019 at 8:30 am.

Having considered the pleadings and the Motion, it is **ORDERED** that:

- Any opposition to the Motion shall be filed by July 8, 2019;

<sup>1</sup> None of the other named Defendants filed an answer to the Fourth Amended Complaint, notwithstanding that it is now the operative pleading in this action. Each Defendant shall file an answer within three business days of the issuance this Order.

<sup>2</sup> Plaintiffs did not challenge OPEL's Answer to the Second Amended Complaint.

<sup>3</sup> The affirmative defense regarding inequitable conduct states: "Upon information and belief, Plaintiffs' attempted enforcement of the Patent against Klein Sr. is barred by the doctrine of inequitable conduct." Dkt. 318 at 8 (Sixth Affirmative Defense). Inequitable conduct is subject to a heightened pleading standard. *Ferguson Beauregard/Logic Controls, Div. of Dover Resources, Inc. v. Mega Sys., LLC*, 350 F.3d 1327, 1344 (Fed. Cir. 2003) ("[I]nequitable conduct, while a broader concept than fraud, must be pled with particularity" under Rule 9(b).").

<sup>4</sup> The affirmative defense regarding "Reservation of Remaining Defenses" states, "Klein Sr. reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Patent Laws of the United States and any other defenses, at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case." Dkt. 318 at 8 (Ninth Affirmative Defense).

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- Any reply to the Motion shall be filed by July 15, 2019;
- The hearing on the Motion is **ADVANCED** from October 7, 2019 to September 30, 2019, at 1:30 p.m.; provided, however, the Motion may be taken under submission if, based upon a review of the aforementioned briefing, it is determined pursuant to Local Rule 7-15 that a hearing is not necessary.

IT IS SO ORDERED.

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